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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,744	08/18/2000	Brian F. Tack	IOWA:026US	7819

7590 03/15/2002

Stephen M. Hash  
FULBRIGHT & JAWORSKI L.L.P  
Suite 2400  
600 Congress Avenue  
Austin, TX 78701

EXAMINER

SHAHNAN SHAH, KHATOL S

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 03/15/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/642,744

Applicant(s)

TACK ET AL.

Examiner

Khatol S Shahnan-Shah

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 and 3 are, drawn to a plurality of peptides, classified in class 530, subclass 300.
  - II. Claim 2 is, drawn to a plurality of polynucleotides, classified in class 536, subclass 23.1.
  - III. Claims 4-11 are, drawn to a method of inhibiting microbial growth *invitro*, classified in class 435, subclass 32.
  - IV. Claims 12, 20-25 are, drawn to a method of inhibiting microbial growth *invivo*, classified in class 424, subclass 9.1.
  - V. Claims 13-19 are, drawn to a method of inhibiting the growth of drug resistant microbial strains, classified in class 435, subclass 4.
  - VI. Claims 26-31 are, drawn to a kit, classified in class 514, subclass 12.
2. The inventions are distinct, each from the other because of the following reasons:

Groups I- II and VI are drawn to structurally and functionally distinct products. The inventions are shown to be distinct because they are drawn to distinct products made by different methods and they are physically and functionally distinct molecules.

Groups III-V are drawn to different methods. The inventions are shown to be distinct because they are drawn to distinct methods, which differ in method objectives, method steps, reagents and material used.

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Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the peptides of group I can be used for immunoassays.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and also requires independent searches restriction for examination purposes as indicated is proper.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

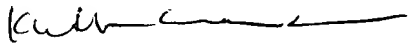
#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahnan-Shah whose telephone number is (703) 308-8896. The examiner can normally be reached from 7:30 AM - 4 PM on Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith, can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned to is (703) 305-3014.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner

March 11, 2002



LYNETTE R. F. SMITH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600